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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/014,131 | 12/13/2001 | Toshikazu Onishi | 35.C13314 D2 | 3837 |

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| EXAMINER | |
|---|---|
| RAMSEY, KENNETH J | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2879 | |

DATE MAILED: 06/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. 10/014,131 | Applicant(s) ONISHI ET AL. | |
|---|---|---|---|
| | Examiner Kenneth J. Ramsey | Art Unit 2879 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *06 May 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *16-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *16-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. *09/248,102* .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 16-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,379,211 or Claim 10 of U.S. Patent No. 6,267,636 in alone or in view of Yamanobe EP 788,130. Claim 3 recites an apparatus for introducing a carbon containing gas and feeding electricity to an electron-emitting device within a sealed atmosphere. Claim 10 recites a corresponding method. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to employ the device of claim 3 in a emitter activation process as in Yamanobe since it is taught at page 4, lines 8-13, that the presence of significant water vapor leads to non-uniform performance of the large number of emitters of a display device (since non-uniform performance leads to poor picture quality). To include a heating step to remove water from the chamber would have been obvious since it is well known to remove water by evaporation.

## *Prior Art Rejections*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 16-25 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Yamanobe, JP 10-188,788. See column 17, paragraph 0107, which as shown by the corresponding text of US patent 6,008,569, column 16, lines 49-63.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 16-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura et al 5,853,310 (Nishimura) in view of Yamanobe, EP 788,130. The examiner takes notice of Nishimura, column 10, lines 7-52, which shows that it is well known to introduce the carbon as a gas in an activation step for surface conduction emitter in which a voltage is applied to the electro-conductive member during activation. Nishimura differs in that there is no disclosure of the moisture content of the organic gas that is introduced in the activation process.

Yamanobe discloses a process of activating a surface conduction field emitter comprising coating the emitter with a carbon material and causing a current to energize the electro-conductive member. Also Yamanobe discloses that water vapor causes non-uniform results in the activation process. Since a non-uniform display is undesirable, it would have been obvious to one of ordinary skill in the art at the time of applicants' invention to remove the water vapor before an activation step, whether the carbon is introduced as a gas or otherwise. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention to heat the chamber of Nishimura prior to introducing the carbon gas to remove the water vapor so to obtain more uniform results in the activation process since Yamanobe teaches that water vapor undesirably affects the activation process.

**THIS ACTION IS MADE FINAL**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Directions for Responses

Any inquiry concerning this communication should be directed to Kenneth J. Ramsey at telephone number (703) 308-2324

Kenneth J Ramsey

KENNETH J. RAMSEY
PRIMARY EXAMINER